

Reminder: Recent Revisions to Securities and Exchange Commission Periodic Reporting Requirements

December 29, 2005

This memorandum provides an overview of several recent changes to the periodic reporting obligations under the Securities Exchange Act of 1934. Reporting companies should consider these changes and other related developments when they prepare future periodic reports.

SECTION 404 INTERNAL CONTROL REPORTING REQUIREMENTS

Section 404 of the Sarbanes-Oxley Act requires that public companies annually review and report on the effectiveness of their internal control over financial reporting. In its annual report, a company subject to Section 404 must disclose any "material weaknesses" it finds in its internal control over financial reporting and must include an external auditor's report evaluating management's assessment and the actual effectiveness of the company's internal control over financial reporting. Companies, other than foreign private issuers, that are "accelerated filers" have been required to comply with Section 404 in their annual reports for all fiscal years ending on or after November 15, 2004. A foreign private issuer that is an accelerated filer will be required to comply with Section 404 in its annual reports for fiscal years ending on or after July 15, 2006. All reporting companies, including foreign private issuers, will be subject to Section 404 in their annual reports for fiscal years ending on or after July 15, 2007.¹ These compliance dates also apply to the requirement that the CEO and CFO certifications include certain representations related to internal control over financial reporting.

¹ The Advisory Committee on Smaller Public Companies established by the Securities and Exchange Commission recently recommended that the SEC (i) waive Section 404's external audit requirement for "smaller public companies" (those with market capitalizations below a level to be established between \$700 million and \$750 million and revenues in the last fiscal year of \$250 million or less) and (ii) exempt "microcap companies" (those with market capitalizations below a level to be established between \$100 million and \$125 million and revenues in the last fiscal year of \$125 million or less) from Section 404, provided that the microcap companies meet certain corporate governance standards and disclose all material weaknesses in internal control over financial reporting known to management. The SEC has not yet indicated whether it will take any actions in response to these recommendations.

REVISIONS TO ACCELERATED FILER DEFINITION AND TO ACCELERATED DEADLINES FOR FILING PERIODIC REPORTS

On December 14, 2005, the SEC adopted rule changes that revise the definition of “accelerated filer,” create a new category of “large accelerated filers” and extend the filing deadlines for periodic reports.² The new rules divide reporting companies into three categories:

- “*large accelerated filers*” - filers with a public float of \$700 million or more;
- “*accelerated filers*” - filers with a public float of at least \$75 million but less than \$700 million; and
- “*non-accelerated filers*” - filers with a public float of less than \$75 million.

The following deadlines will now apply to periodic reports filed for fiscal years ending on or after December 15, 2005:³

	Large Accelerated Filers	Accelerated Filers	Non-Accelerated Filers
Deadline for Annual Reports on Form 10-K	75 days after issuer’s fiscal year-end	75 days after issuer’s fiscal year-end	90 days after issuer’s fiscal year-end
Deadline for Quarterly Reports on Form 10-Q	40 days after issuer’s fiscal quarter-end	40 days after issuer’s fiscal quarter-end	45 days after issuer’s fiscal quarter-end

² See SEC Release Nos. 33-8644; 34-52989 (December 21, 2005). The definition of “accelerated filer” previously encompassed any issuer meeting the following conditions as of the end of its fiscal year: (1) the aggregate market value of the voting and non-voting and non-voting common equity held by non-affiliates of the issuer is \$75 million or more; (2) the issuer has been subject to reporting requirements under the Exchange Act for at least 12 calendar months; (3) the issuer has filed at least one annual report under the Exchange Act; and (4) the issuer is not eligible to use Forms 10-KSB and 10-QSB for its annual and quarterly reports. To be considered a large accelerated filer or an accelerated filer under the new rules, an issuer still must satisfy conditions (2) – (4), in addition to the applicable public float condition.

³ Under previous SEC regulations, all accelerated filers would have been required to file annual reports for fiscal years ending on or after December 15, 2005 within 60 days after the issuer’s fiscal year-end and quarterly reports for subsequent periods within 35 days after the issuer’s fiscal quarter-end.

For fiscal years ending on or after December 15, 2006, the following deadlines will now apply:

	Large Accelerated Filers	Accelerated Filers	Non-Accelerated Filers
Deadline for Annual Reports on Form 10-K	60 days after issuer's fiscal year-end	75 days after issuer's fiscal year-end	90 days after issuer's fiscal year-end
Deadline for Quarterly Reports on Form 10-Q	40 days after issuer's fiscal quarter-end	40 days after issuer's fiscal quarter-end	45 days after issuer's fiscal quarter-end

The SEC has also made it easier for large accelerated filers and accelerated filers to exit accelerated filing status. A large accelerated filer can begin to file as an accelerated filer in the same year in which its public float is determined have fallen below \$500 million, and an accelerated filer can begin to file as a non-accelerated filer in the same year in which its public float is determined to have fallen below \$50 million.

NEW CHECK BOXES ON PERIODIC REPORT COVER PAGES

The applicability of many of the new regulations depends upon the status of the issuer. Accordingly, to provide more easily accessible information to market participants and regulators, the cover pages of certain periodic reports have been revised to include new check boxes regarding the status of the filing company.

To indicate whether the issuer is filing Exchange Act reports voluntarily, the following box must appear on the cover page of Form 10-Q, Form 10-QSB, Form 10-K, Form 10-KSB and Form 20-F:

"Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No"

To indicate whether the issuer falls within the definition of a shell company, the cover page of each Form 10-Q, 10-QSB, 10-K, 10-KSB and 20-F must include the following item:

"Indicate by check mark whether the registrant is a shell company (as defined by Rule 12b-2 of the Exchange Act). Yes No"

To indicate whether the issuer qualifies as a well-known seasoned issuer (“WKSI”)⁴ as defined in the recently enacted Securities Act reforms, the following box must appear on the cover page of Form 10-K and Form 20-F:

“Indicate by check mark if the registrant is a well-known seasoned issuer as defined in Rule 405 of the Securities Act. Yes No”

To reflect the revised accelerated filer definition, the cover page of Form 10-K, Form 10-Q and Form 20-F must include the following check box:

“Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of ‘accelerated filer and large accelerated filer’ in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer _____ Accelerated filer _____ Non-accelerated filer _____”

RISK FACTORS

All annual reports on Form 10-K filed for fiscal years ending on or after December 1, 2005 and registration statements on Form 10 must include plain English risk factor disclosure where appropriate. Quarterly reports on Form 10-Q must describe any material changes in the risk factors. (Annual reports of foreign private issuers on Form 20-F are already required to include risk factor disclosure where appropriate.) Issuers may incorporate this risk factor disclosure by reference into Securities Act registration statements. Risk factor disclosure is not required in Form 10-KSB, Form 10-QSB or Form 10-SB. Issuers will disclose risk factors in Item 1A of Form 10-K and Form 10-Q.

MATERIAL UNRESOLVED SEC COMMENTS

As a result of requirements recently adopted as part of the Securities Act offering reforms, large accelerated filers, accelerated filers and WKSI are now required to disclose in their annual reports on Form 10-K or Form 20-F descriptions of any material unresolved written comments from the SEC staff regarding the issuer’s Exchange Act filings if the comments were issued more than 180 days before the end of the issuer’s fiscal year and remain unresolved at the time the issuer files its annual report on Form 10-K or Form 20-F. The issuer may state its position on the unresolved comments. Issuers will disclose material unresolved written comments in Item 1B of Form 10-K and in Item 4A of Form 20-F.

⁴ An issuer will qualify as a WKSI if it has timely filed all Exchange Act reports for at least one year, is not an ineligible issuer and, within 60 days of the relevant eligibility determination date, has either (a) at least \$700 million worldwide public float of equity securities or (b) has issued at least \$1 billion in non-convertible debt securities (other than common equity) in the last three years.

DISCLOSURE OF TAX SHELTER PENALTIES

An issuer filing Form 10-K or Form 10-KSB must disclose in “Item 3. Legal Proceedings” whether it has had certain tax shelter penalties assessed by the Internal Revenue Service against it or its consolidated subsidiaries in respect of transactions that have been identified by the IRS as abusive or having a significant tax avoidance purpose. Failure to make any such required disclosure may subject the issuer to up to a \$200,000 penalty.

XBRL (EXTENSIBLE BUSINESS REPORTING LANGUAGE)

The SEC now permits issuers to voluntarily furnish XBRL data in exhibits to specified EDGAR filings. The SEC will evaluate the ability of issuers to tag financial information using XBRL and the extent to which such tagged data enables enhanced analysis by market participants. The SEC believes that the use of interactive data will turn financial reports that have previously been text-only into documents that can be retrieved through computer searches and analyzed in a variety of electronic applications by investors seeking attractive investment opportunities and regulators looking for warning signs of fraud.

SHELL COMPANIES

In 2005, the SEC adopted rules intended to prevent abuses involving public shell companies. Securities Act Rule 405 and Exchange Act Rule 12b-2 define a “shell company” as a company, other than an asset-backed issuer, that files periodic reports under the Exchange Act and has:

- no operations or only nominal operations; and
- one of the following:
 - no assets or only nominal assets;
 - assets consisting solely of cash and cash equivalents; or
 - assets consisting of any amount of cash and cash equivalents and nominal other assets.

A shell company that is not a business combination related shell company⁵ may not register securities on Form S-8 until at least 60 days after it ceases to be a shell company. Pursuant to new

⁵ A “business combination related shell company” is (1) a shell company formed by an entity that is not a shell company solely for the purpose of changing that entity’s domicile solely within the United States or (2) a shell company formed by an entity that is not a shell company solely for the purpose of completing a business combination transaction among one or more entities other than the shell company, none of which is a shell company.

Item 5.06 of Form 8-K, a public shell company must file a Form 8-K to report any transaction that causes the company to cease being a shell company. The report must include all information that would be required to register a class of securities under Section 12 of the Exchange Act using Form 10 or Form 10-SB. Amended Item 2.01 of Form 8-K requires a public shell company that acquires a private operating company to make a detailed filing on Form 8-K within four business days after completing the acquisition. Amended Item 9.01 of Form 8-K requires a public shell company that acquires a private operating company to file audited financial statements of the operating company and pro forma financial information for the combined entities on a Form 8-K within four business days after completing the transaction. Amended Item 5.01 of Form 8-K requires a private operating company that acquires and succeeds to the reporting obligations of a public shell company to file a Form 8-K within four business days after the acquisition including include all of the information that would be required to register a class of securities under Section 12 of the Exchange Act using Form 10 or Form 10-SB.

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